

CHAPTER NO. 997**HOUSE BILL NO. 3676**

By Representatives Odom, Harry Brooks, DuBois, Eldridge, Sargent

Substituted for: Senate Bill No. 3983

By Senators Cooper, Bowers, Burchett

AN ACT to amend Tennessee Code Annotated, Title 56, Chapter 6, to enact the "Tennessee Public Adjuster Licensing Act of 2006" and relative to the licensing of public adjusters.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 56, Chapter 6, is amended by adding the following as a new appropriately designated part.

SECTION 2. This act shall be known as and may be cited as the "Tennessee Public Adjuster Licensing Act of 2006". This part governs the qualifications and procedures for the licensing of public adjusters. It specifies the duties of and restrictions on public adjusters, which include limiting their licensure to assisting insureds in first party claims.

SECTION 3. As used in this part, unless the context otherwise requires:

(1) "Catastrophic disaster" means an event that results in large numbers of deaths and injuries; causes extensive damage or destruction of facilities that provide and sustain human needs; produces an overwhelming demand on state and local response resources and mechanisms; causes a severe long-term effect on general economic activity; and severely affects state, local and private sector capabilities to begin and sustain response activities. A catastrophic disaster shall be a single occurrence that damages twenty-five (25) or more residential dwellings;

(2) "Commissioner" means the commissioner commerce and insurance;

(3) "Fingerprints" means an impression of the lines on the finger taken for purpose of identification. The impression may be electronic or in ink converted to electronic format;

(4) "Home state" means the District of Columbia and any state or territory of the United States in which the public adjuster's principal place of residence or principal place of business is located. If neither the state in which the public adjuster maintains the principal place of residence nor the state in which the public adjuster maintains the principal place of business has a substantially similar law governing public adjusters, the public adjuster may declare another state in which it becomes licensed and acts as a public adjuster to be the "home state".

(5) "Individual" means a natural person;

(6) "NAIC" means the National Association of Insurance Commissioners;

(7) "Person" means an individual or a business entity;

(8) "Public adjuster" means any person (other than someone who is employed by an insurance carrier) who, for compensation or any other thing of value, on behalf of the insured:

(A) Acts or aids, solely in relation to first party claims arising under insurance contracts that insure the real or personal property of the insured on behalf of an insured in investigating, verifying, substantiating, estimating, appraising, determining, presenting, and discussing the value of the claim, and effectuating the resolution of a claim for loss or damage covered by an insurance contract;

(B) Advertises for employment as a public adjuster of insurance claims or solicits business or represents himself or herself to the public as a public adjuster of first party insurance claims for losses or damages arising out of policies of insurance that insure real or personal property; or

(C) Directly or indirectly solicits business, investigates or adjusts losses, or advises an insured about first party claims for losses or damages arising out of policies of insurance that insure real or personal property for another person engaged in the business of adjusting losses or damages covered by an insurance policy, for the insured.

(D) Nothing in this act nor the regulations adopted under this act shall authorize any public adjuster or person operating at the direction of a public adjuster to engage in conduct which is law practice or law business as defined in Title 23, Chapter 3 or under the Rules of the Tennessee Supreme Court.

(E) Nothing in this act nor the regulations adopted under this act shall apply to a person who is employed by, or under contract to, an insurance company.

(F) Nothing in this act nor the regulations adopted under this act shall affect or alter in any way the contractual obligations on an insured to their insurance company and the duty of good faith each owes the other;

(9) "Uniform business entity application" means the current version of the NAIC Uniform Business Entity Application for resident and nonresident business entities; and

(10) "Uniform individual application" means the current version of the NAIC Uniform Individual Application for resident and nonresident individuals.

SECTION 4.

(a) No person shall act or hold himself out as a public adjuster as defined in Section 3(8), unless licensed as a public adjuster in accordance with this part.

(b) A person licensed as a public adjuster shall not misrepresent to a claimant that he or she is an adjuster acting on behalf of or aiding an insurer in any capacity,

including acting as an employee of the insurer or acting as an independent adjuster unless so appointed by an insurer in writing to act on the insurer's behalf for that specific claim or purpose.

(c) A business entity acting as a public adjuster is required to obtain a public adjuster license. Application shall be made using the uniform business entity application. Before approving the application, the commissioner shall find that:

(1) The business entity has paid the fees set forth in the rule promulgated under Section 6(a)(5); and

(2) The business entity has designated a licensed public adjuster responsible for the business entity's compliance with the insurance laws, rules and regulations of this state.

(d) Notwithstanding the provisions of this section, a license as a public adjuster shall not be required of the following:

(1) An attorney at law admitted to practice in this state or an employee of such attorney acting under such attorney's supervision;

(2) A person who negotiates or settles claims arising under a life or health insurance policy or an annuity contract;

(3) A person employed only for the purpose of obtaining facts surrounding a loss or furnishing technical assistance to a licensed public adjuster, including without limitation photographers, contractors, appraisers of value, private investigators, engineers and handwriting experts;

(4) A licensed health care provider, employee of a licensed health care provider, who prepares or files a health claim form on behalf of a patient; or

(5) A person who settles subrogation claims between insurers; or

(6) A person who is employed by, or under contract to, an insurance company.

SECTION 5.

(a) A person applying for a public adjuster license shall make application to the commissioner on the appropriate uniform application or other application prescribed by the commissioner.

(b) The applicant shall declare under penalty of perjury and under penalty of refusal, suspension or revocation of the license, that the statements made in the application are true, correct and complete to the best of the applicant's knowledge and belief.

(c) In order to make a determination of license eligibility, the insurance commissioner is authorized to require fingerprints of applicants and submit the fingerprints and the fee required to perform the criminal history record checks to the

Tennessee bureau of investigation and the federal bureau of investigation (FBI) for state and national criminal history record checks; the insurance commissioner shall require a criminal history record check on each applicant in accordance with this part. The insurance commissioner shall require each applicant to submit a full set of fingerprints in order for the insurance commissioner to obtain and receive National Criminal History Records from the FBI criminal justice information services division.

(1) The commissioner may contract for the collection, transmission and resubmission of fingerprints required under this section. If the commissioner does so, the fee for collecting, transmitting and retaining fingerprints shall be payable directly to the contractor by the applicant. The commissioner may agree to a reasonable fingerprinting fee to be charged by the contractor.

(2) The commissioner may waive submission of fingerprints by any person that has previously furnished fingerprints and maintains fingerprints on file with the central repository of the NAIC, its affiliates or subsidiaries.

(3) The commissioner is authorized to submit electronic fingerprint records and necessary identifying information to the NAIC, its affiliates or subsidiaries for permanent retention in a centralized repository. The purpose of such a centralized repository is to provide insurance commissioners with access to fingerprint records in order to perform criminal history record checks.

SECTION 6.

(a) Before issuing a public adjuster license to an applicant under this section, the commissioner shall find that the applicant:

(1) Is eligible to designate this state as his or her home state or is eligible for a license pursuant to Section 9;

(2) Has not committed any act that is a ground for denial, suspension or revocation of a license as set forth in Section 11;

(3) Is trustworthy, reliable, and of good reputation;

(4) Is financially responsible to exercise the license and has provided proof of financial responsibility as required in Section 12 of this act;

(5) Has paid the fees set forth by rule or regulation of the commissioner; and

(6) Maintains an office in his or her home state of residence with public access by reasonable appointment or regular business hours, or both.

(b) In addition to satisfying the requirements of subsection (a), unless exempted pursuant to the provisions of this part, an individual shall:

(1) Be at least eighteen (18) years of age;

(2) Have successfully passed the public adjuster examination;

(3) Designate a licensed individual public adjuster responsible for the business entity's compliance with the insurance laws, rules, and regulations of this state; and

(4) Designate only licensed individual public adjusters to exercise the business entity's license.

(c) The commissioner may require any documents reasonably necessary to verify the information contained in the application.

SECTION 7.

(a) An individual applying for a public adjuster license under this act shall pass a written examination unless exempt pursuant to Section 8. The examination shall test the knowledge of the individual concerning the duties and responsibilities of a public adjuster and the insurance laws and regulations of this state. Examinations required by this section shall be developed and conducted under rules and regulations prescribed by the commissioner.

(b) The commissioner may make arrangements, including contracting with an outside testing service, for administering examinations and collecting a nonrefundable fee in an amount set forth by rule by the commissioner.

(c) Each individual applying for an examination shall remit a non-refundable fee as prescribed by the commissioner and in an amount set by rule promulgated by the commissioner.

(d) An individual who fails to appear for the examination as scheduled or fails to pass the examination shall reapply for an examination and remit all required fees and forms before being rescheduled for another examination.

SECTION 8.

(a) An individual who applies for a public adjuster license in this state who was previously licensed as a public adjuster in another state based on a public adjuster examination shall not be required to take or complete any prelicensing examination. This exemption is only available if the person is currently licensed in that state or if the application is received within twelve (12) months of the cancellation or termination of the applicant's previous license and

(1) If the prior state issues a certification that, at the time of cancellation or termination, the applicant was in good standing in that state or the state's producer database records; or

(2) Records maintained by the NAIC, its affiliates, or subsidiaries, indicate that the public adjuster is or was licensed in good standing at the time of cancellation or termination.

(b) A person licensed as a public adjuster in another state based on a public adjuster examination who moves to this state shall make application within ninety (90)

days of establishing legal residence to become a resident licensee pursuant to Section 6 of this act. No preclicensing examination shall be required of that person to obtain a public adjuster license.

(c) An individual who applies for a public adjuster license in this state who was previously licensed as a public adjuster in this state shall not be required to complete any preclicensing examination. This exemption is only available if the application is received within twelve (12) months of the cancellation or termination of the applicant's previous license in this state and if, at the time of cancellation or termination, the applicant was in good standing in this state.

SECTION 9.

(a) Unless denied licensure pursuant to Section 11, a nonresident person shall receive a nonresident public adjuster license if:

(1) The person is currently licensed as a resident public adjuster and in good standing in his or her home state;

(2) The person has submitted the proper request for licensure, has paid the fees required by the rule promulgated under Section 6(a)(5), and has provided proof of financial responsibility as required in Section 12;

(3) The person has submitted or transmitted to the commissioner the appropriate completed application for licensure;

(4) The person's home state has adopted a Public Adjuster Licensing Act, that is substantially similar to this act, and

(5) The non-resident public adjuster representing an insured in this state must remain reasonably available for communications with the insured and insurance carrier.

(b) The commissioner may verify the public adjuster's licensing status through the producer database maintained by the NAIC, its affiliates, or subsidiaries.

(c) As a condition to continuation of a public adjuster license issued under this section, the licensee shall maintain a resident public adjuster license in his or her home state. The non-resident public adjuster license issued under this section shall terminate and be surrendered immediately to the commissioner if the home state public adjuster license terminates for any reason, unless the public adjuster has been issued a license as a resident public adjuster in his or her new home state. The licensed non-resident public adjuster must provide prompt notification of the new home state license to the state or states which have issued the non-resident license. This notification shall include the licensee's new and old addresses. A new state resident license is required for non-resident licenses to remain valid. The new state resident license must have reciprocity with the licensing non-resident state (s) for the non-resident license not to terminate.

SECTION 10.

(a) Unless denied licensure under this part, persons who have met the requirements of this act shall be issued a public adjuster license.

(b) A public adjuster license shall remain in effect for a period of two (2) years unless revoked, terminated or suspended. The commissioner may renew a license issued under this act as long as the request for renewal and fee set forth in the rule promulgated under Section 6(a)(5) is paid and any other requirements for license renewal are met by the date of the license's expiration.

(c) The licensee shall inform the commissioner by any means acceptable to the commissioner of a change of address, change of legal name, or change of material information submitted on the application within thirty (30) days of the change.

(d) A licensed public adjuster shall be subject to the provisions of title 56, chapters 8 and 53.

(e) A public adjuster who allows his or her license to lapse may, within twelve (12) months from the date of expiration, be issued a new public adjuster license upon the commissioner's receipt of the request for renewal. However, a penalty in the amount of double the unpaid renewal fee shall be required and be subject to other penalties as provided by law before the license will be renewed. If the commissioner receives the request for reinstatement and the required lapsed license fee within sixty (60) days of the date the license lapsed, the commissioner shall reinstate the license retroactively to the date the license lapsed. If the commissioner receives the request for reinstatement and the required lapsed license fee after sixty (60) days but within one (1) year of the date the license lapsed, the commissioner shall reinstate the license prospectively with the date the license is reinstated. If the person applies for reinstatement more than one (1) year from date of lapse, the person shall reapply for the license under this act.

(f) A licensed public adjuster that is unable to comply with license renewal procedures due to military service, a long-term medical disability, or some other extenuating circumstance, may request a waiver of those procedures. The public adjuster also may request a waiver of any examination requirement, fine, or other sanction imposed for failure to comply with renewal procedures.

(g) The license shall contain the licensee's name, city and state of business address, personal identification number, the date of issuance, the expiration date, and any other information the commissioner deems necessary.

(h) In order to assist in the performance of the commissioner's duties, the commissioner may contract with non-governmental entities, including but not limited to the NAIC or any affiliates or subsidiaries that the NAIC oversees, to perform any functions, including testing and the collection of fees and data, related to licensing, that the commissioner may deem appropriate.

SECTION 11.

(a) The commissioner may place on probation, cancel, terminate, suspend, revoke or refuse to issue or renew a public adjuster's license or may levy a civil penalty in accordance with the provisions hereof or any combination of actions, for any one (1) or more of the following causes:

- (1) Providing materially incorrect, misleading, incomplete, or untrue information in the license application;
- (2) Violating any laws administered by the commissioner, or violating lawful regulations, or final orders of the commissioner or of another state's insurance commissioner;
- (3) Obtaining or attempting to obtain a license through misrepresentation or fraud;
- (4) Improperly withholding, misappropriating, or converting to his/her own use any monies or properties received in the course of conducting business under this license;
- (5) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;
- (6) Having been convicted of a felony or other offense involving dishonesty, fraud, deceit or misrepresentation, in a final decision of a court of competent jurisdiction;
- (7) Having committed any insurance unfair trade practice or insurance fraud prohibited under title 56, chapters 8 and 53;
- (8) Using fraudulent, coercive or dishonest practice or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere;
- (9) Having an insurance producer license, or its equivalent, suspended or revoked in any other state, province, district or territory;
- (10) Forging another's name to an application for insurance or to any document related to an insurance transaction;
- (11) Cheating on an examination for an insurance license;
- (12) Knowingly accepting insurance business from an individual who is not licensed by the commissioner but who is required to be so licensed;
- (13) Allowing a person not licensed under this act to perform actions requiring licensure hereunder; or
- (14) Failing to comply with a final administrative or court order imposing a child support obligation.
- (15) Failing to notify the insured, verbally and in writing, of the statutory requirements of this act as they pertain to solicitation, contracting, and rescission and the timeframes contained herein.

(b) Any action by the commissioner to put on probation, suspend, revoke or deny the renewal of a license pursuant to this action shall be governed by the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(c) In the event that the action of the commissioner is to deny an application for a license, the commissioner shall notify the applicant and advise, in writing, the applicant of the denial of the applicant's application within thirty (30) days.

(d) The license of a business entity may be suspended, revoked or refused if the commissioner finds that an individual's violation was known or should have been known by one (1) or more of the partners, officers or managers acting on behalf of the business entity and the violation was not timely reported to the commissioner and corrective action was not taken.

(e) In addition to or in lieu of any applicable denial, suspension, cancellation, termination, or revocation of a license, a person may, after a hearing, be subject to a civil penalty in an amount not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each separate violation of the grounds in subsection (a). Each day of continued violation shall constitute a separate violation.

(f) The commissioner shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by this act or any other provision of this title against any person who is under investigation for or charged with a violation of this act even if the person's license or registration has been surrendered or has lapsed by operation of law.

(g) The commissioner may serve a notice or order in any action arising under this act by registered or certified mail to the public adjuster or applicant at the address of record on file with the commissioner. Notwithstanding any provisions of law to the contrary, service in the manner set forth herein shall be deemed to constitute actual service on such public adjuster or applicant.

SECTION 12. Prior to issuance of a license as a public adjuster and for the duration of the license, the applicant shall secure evidence of financial responsibility in a format prescribed by the commissioner through a surety bond and an errors and omissions insurance policy or such other security satisfactory to the department of insurance.

(a) A surety bond executed and issued by an insurer authorized to issue surety bonds in this state, said bond:

(1) Shall be in the minimum amount of fifty thousand dollars (\$50,000);

(2) Shall be in favor of this state and shall specifically authorize recovery by the commissioner on behalf of any person in this state who sustained damages as the result of erroneous acts, failure to act, conviction of fraud, or conviction of unfair practices in his or her capacity as a public adjuster;

(3) Shall not be terminated unless at least thirty (30) days' prior written notice will have been filed with the commissioner and given to the licensee; and

(4) Shall be in a form approved by the commissioner.

(b) The licensed public adjuster shall promptly notify the commissioner upon termination of the bond, unless otherwise directed by the commissioner.

(c) The commissioner may ask for the evidence of financial responsibility at any time he or she deems it necessary and proper to protect the rights of Tennessee consumers.

(d) The authority to act as a public adjuster shall automatically terminate if the evidence of financial responsibility terminates or becomes substantially impaired.

(e) The errors and omissions policy shall be executed by and issued by an admitted insurer authorized to issue errors and omissions policies in this state, and shall be in the minimum amount of five hundred thousand dollars (\$500,000) per occurrence.

SECTION 13.

(a) An individual, who holds a public adjuster license and who is not exempt under subsection (b) of this section, shall satisfactorily complete a minimum of twenty-four (24) hours of continuing education courses, including ethics, reported on a biennial basis in conjunction with the license renewal cycle. Such education required by this section shall be in addition to any other continuing education requirements required for other professional licenses held by the individuals licensed under this act.

(b) This section shall not apply to:

(1) Licensees not licensed for one (1) full year prior to the end of the applicable continuing education biennium; or

(2) Licensees holding nonresident public adjuster licenses who have met the continuing education requirements of their home state and whose home state gives credit to residents of this state on substantially the same basis.

(c) Except as set forth in subsection (b) herein, only continuing education courses approved by the commissioner shall be used to satisfy the continuing education requirement of subsection (a).

SECTION 14.

(a) A public adjuster may charge the insured a reasonable fee. If a contract between the public adjuster and the insured is formed before the insurance carrier has made an offer of settlement, then the public adjuster may not charge a fee that is greater than fifteen percent (15%) of the total proceeds of the insurance settlement. If a contract between the public adjuster and the insured is formed after the insurance carrier has made an offer of settlement, then the public adjuster may not charge any more than twenty-five percent (25%) of the difference of the insurance company's last offer to the insured prior to the public adjuster contract with that insured and the last offer after the public adjuster entered a contract with the insured and negotiated, if any, additional settlement proceeds. If the insured has obtained a home mortgage in the amount of one hundred percent (100%) of the appraised value of the home, then a public adjuster may charge a fee not to exceed ten percent (10%) of the total proceeds of an insurance

settlement that is a total loss of such home, which shall be deemed to be a policy limit payment, occurring during a catastrophic disaster within the first twelve (12) months of the term of such home mortgage. This limitation applies regardless of when a contract is entered into between the public adjuster and the insured. Provided, however, a public adjuster shall charge no fee on any advance payment prior to the contract between the insured and the public adjuster to the insured. Nothing herein prohibits a public adjuster from charging variation of fees so long as those fees do not exceed the above amounts. The provisions of this subsection shall not apply to commercial insurance.

(b) A public adjuster shall not pay a commission, service fee or other valuable consideration to a person for investigating, resolving or working in connection with, claims in this state if that person is required to be licensed under this act and is not so licensed.

(c) A public adjuster shall not accept a commission, service fee or other valuable consideration for investigating or settling claims in this state if he is required to be licensed under this act and is not so licensed.

(d) No public adjuster shall require, demand or accept any fee, retainer, compensation, deposit, or other thing of value, prior to settlement of a claim.

SECTION 15.

(a) Public adjusters shall ensure that all contracts for their services are in writing and contain the following terms:

(1) Legible full name of the adjuster signing the contract, as reflected in the records on file with the commissioner;

(2) Permanent home state business address and phone number;

(3) Tennessee public adjuster license number;

(4) Title of "Public Adjuster Contract" or its substantial equivalent;

(5) The insured's full name, street address, insurance company name and policy number, if known.;

(6) A description of the loss and its location, if applicable;

(7) Description of services to be provided to the insured;

(8) Signatures of the public adjuster and the insured;

(9) Date contract was signed by the public adjuster and date the contract was signed by the insured;

(10) Attestation language stating that the public adjuster is fully bonded pursuant to this part;

(11) Full salary, fee, commission, compensation or other considerations the public adjuster is to receive for services;

(12) If the compensation is based on a share of the insurance settlement, the exact percentage shall be specified;

(13) Initial expenses to be reimbursed to a public adjuster from the proceeds of the claim payment shall be specified by type, with dollar estimates set forth in the contract and with any additional expenses to first be approved by the insured; and

(14) Compensation provisions in a public adjusting contract shall not be redacted in any copy of the contract provided to the commissioner.

(b) If the insurer, not later than seventy-two (72) hours after the date on which the loss is reported to the insurer, either pays or commits in writing to pay to the insured the policy limit of the insurance policy, the public adjuster shall:

(1) Not receive a commission consisting of a percentage of the total amount paid by an insurer to resolve a claim;

(2) Inform the insured that the amount of any recovery amount might not be increased; and

(3) Be entitled only to reasonable compensation from the insured for services provided by the public adjuster on behalf of the insured, based on the time spent on a claim and expenses incurred by the public adjuster, until the claim is paid or the insured receives a written commitment to pay from the insurer.

(c) A public adjuster shall provide the insured a written disclosure concerning any direct or indirect financial interest that the public adjuster has with any other party who is involved in any aspect of the claim (other than the salary, fee, commission or other consideration established in the written contract with the insured) including but not limited to any ownership (other than as a minority stockholder), in a publicly traded entity, or any compensation expected to be-received from, any construction firm, building appraisal firm, motor vehicle repair shop, or any other firm that provides estimates for work, or that performs any work, in conjunction with damages caused by the insured loss on which the public adjuster is engaged. The word "firm" shall include any corporation, partnership, association, joint-stock company or person.

(d) A public adjuster contract may not contain any contract term that:

(1) Allows the public adjuster's percentage fee to be collected when money is due from an insurance company, but not paid, or that allows a public adjuster to collect the entire fee from the first check issued by an insurance company, rather than as percentage of each check issued by an insurance company;

(2) Requires or requests the public adjuster's name on the issuance of the check;

- (3) Imposes collection costs or late fees in violation of Tennessee law; or
- (4) Precludes an insured from pursuing civil remedies.

(e) Prior to the signing of the contract, the public adjuster shall provide the insured with a separate disclosure document regarding the claim process that states:

(1) An insured is obligated to present his or her claim to an insurance company in the manner set forth in the insurance contract as required by law. The insured and the insurer shall act in good faith toward the other as required by law. There are three (3) types of adjusters that could be involved in that process. The definitions of the three (3) types are as follows:

(A) "Company adjuster" means the insurance adjusters who are employees of an insurance company. They are paid by the insurance company and will not charge the insured a fee.

(B) "Independent adjuster" means the insurance adjusters who are hired on a contract basis by an insurance company in the settlement of the claim. They are paid by your insurance company. They will not charge the insured a fee.

(C) "Public adjuster" means the insurance adjusters who do not work for any insurance company. They work for the insured in connection with the insured's claim against the insured's insurance carrier. The insured hires them by signing a contract agreeing to pay them a fee or commission based on a percentage of the settlement, or other method of compensation.

(2) The insured is not required to hire a public adjuster to help the insured meet his or her obligations under the policy, but has a right to do so.

(3) The insured has the right to initiate direct communications with the insured's attorney, the insurer, the insurer's adjuster, and the insurer's attorney, or any other person regarding the settlement of the insured's claim.

(4) The public adjuster is not a representative or employee of the insurer;

(5) The salary, fee, commission or other consideration is the obligation of the insured, not the insurer; and

(6) An insurance company has the right to communicate with its insured even if the insured has hired a public adjuster, but if requested by the insured, the insurance company will make a concerted effort to include the public adjuster in communications with the insured.

(f) The insured shall be given a copy or the original of the contract with the public adjuster. The public adjuster's original contract, or a copy, shall be available at all times for inspection without notice by the commissioner.

(g) The public adjuster shall provide the insurer a notification letter, which has been signed by the insured, authorizing the public adjuster to represent the insured's interest.

(h) The insured has the right to rescind the contract within three (3) business days after the date the contract was signed. The rescission shall be in writing and mailed or delivered to the public adjuster at the public adjuster's address in the contract within the three (3) business day period.

(i) If the insured exercises the right to rescind the contract, anything of value given by the insured to the public adjuster under the contract will be returned to the insured within three (3) business days following the receipt by the public adjuster of the cancellation notice.

(j) Nothing in this act shall prevent a public adjuster from requesting an insured to request the insurer to include the public adjuster's name as a payee on any check.

SECTION 16. A public adjuster who receives, accepts or holds any funds on behalf of an insured, towards the settlement of a claim for loss or damage, shall deposit the funds in a non-interest bearing escrow or trust account in a financial institution that is insured by an agency of the federal government in the insured's home state or in the state where the loss occurred.

SECTION 17.

(a) A public adjuster shall maintain complete records of each transaction as a public adjuster. The records required by this section shall include the following:

(1) Name of the insured;

(2) Date, location and amount of the loss;

(3) Copy of the contract between the public adjuster and insured;

(4) Name of the insurer and, if available, amount, expiration date and number of each policy carried with respect to the loss;

(5) Itemized statement of the insured's recoveries;

(6) Itemized statement of all compensations received by the public adjuster, from any source whatsoever, in connection with the loss;

(7) A register of all monies received, deposited, disbursed, or withdrawn in connection with a transaction with an insured, including fees transfers and disbursements from a trust account and all transactions concerning all interest bearing accounts;

(8) Name of public adjuster who executed the contract;

(9) Name of the attorney representing the insured, if applicable, and the name of the claims representatives of the insurance company; and

(10) Evidence of financial responsibility in a format prescribed by the insurance commissioner.

(b) Records of transactions as a public adjuster shall be maintained for at least five (5) years after the termination of the transaction with an insured and shall be open to examination by the commissioner at all times.

SECTION 18.

(a) A public adjuster is obligated, under his or her license, to serve with objectivity and complete loyalty in the interest of his client alone; and to render to the insured such information, counsel and service, as within the knowledge, understanding and opinion in good faith of the licensee, as will best serve the insured's insurance claim needs and interest.

(b) A public adjuster shall not solicit an insured for two (2) days after any loss and shall not contract with an insured for an additional three (3) days. For catastrophic losses, as defined herein, a public adjuster shall not solicit an insured for seven (7) days after the loss. The provisions of this subsection shall not apply to commercial insurance.

(c) A public adjuster shall not permit an unlicensed employee or representative of the public adjuster to conduct business for which a license is required under this part.

(d) A public adjuster shall not have a direct or indirect financial interest in any aspect of the claim, other than the salary, fee, commission or other consideration established in the written contract with the insured, unless full written disclosure has been made to the insured.

(e) The public adjuster shall not refer or direct the insured to get needed repairs or services in connection with a loss from any person with whom the public adjuster has a financial interest; or from whom the public adjuster may receive direct or indirect compensation for the referral unless the interest or compensation is disclosed to the insured.

(f) The public adjuster shall not, directly or indirectly, buy or obtain for resale or other remuneration, any salvage of the insured subject to a claim upon which the public adjuster is or has worked.

(g) The public adjuster shall disclose to an insured if he or she has any interest or will be compensated by any construction firm, building appraisal firm, motor vehicle repair shop or any other firm that performs any work in conjunction with damages caused by the insured loss. The word "firm" shall include any individual corporation, partnership, association, joint-stock company or legal entity.

(h) Any compensation or anything of value in connection with an insured's specific loss that will be received by a public adjuster shall be disclosed by the public adjuster to the insured in writing including the source and amount of any such compensation.

(i) Public adjusters shall adhere to the following general ethical requirements:

(1) A public adjuster shall not undertake the adjustment of any claim if the public adjuster is not sufficiently competent and knowledgeable as to the terms and conditions of the insurance coverage so as to properly discharge his duties as public adjuster, or which otherwise exceeds the public adjuster's current expertise;

(2) A public adjuster shall not knowingly make any oral or written material misrepresentations or statements to any insured client or potential insured client which are false or maliciously critical and intended to injure any person engaged in the business of insurance;

(3) No public adjuster, while so licensed by the commissioner, may represent or act as a company adjuster, or independent adjuster on the same claim;

(4) The contract shall not be construed to prevent an insured from pursuing any civil remedy after the three (3) business day revocation or cancellation period;

(5) A public adjuster shall not enter into a contract or accept a power of attorney that vests in the public adjuster the effective authority to choose the persons who shall repair the insured's property; and

(6) A public adjuster shall ensure that all contracts for the public adjuster's services are in writing and set forth all material terms and conditions of the engagement.

(b) A public adjuster may not agree to any loss settlement without the insured's knowledge and consent.

SECTION 19.

(a) The public adjuster shall report to the commissioner any administrative action taken against the public adjuster in another jurisdiction or by another governmental agency in this state within thirty (30) days of the final disposition of the matter. This report shall include a copy of the order, consent to order, or other relevant legal documents.

(b) Within thirty (30) days of arraignment or other formal presentment of charges and entry of plea, the public adjuster shall report to the commissioner any prosecution of the public adjuster for a felony taken in any jurisdiction. The report shall include a copy of the initial complaint filed, the order resulting from the hearing, and any other relevant legal documents necessary to explain the charges brought against the public adjuster.

SECTION 20. The commissioner may make such investigations as are necessary for the proper administration of this act. For the purpose of making such investigations, the commissioner shall have inquisitorial powers and shall be empowered to subpoena witnesses and examine them under oath; provided, that all testimony, documents and other evidence obtained by the commissioner pursuant to this section shall be absolutely privileged and shall not be admissible as evidence in any private civil proceeding. Notwithstanding the foregoing, the

adjuster may request and obtain from the department a copy of any charges brought against the adjuster, or if no charges have been filed, a written notice of the alleged violation.

SECTION 21. The commissioner may promulgate regulations as are necessary or proper to carry out the purposes of this act. These regulations may include provisions relating to the assessment of licensure fees reasonable to defray the costs of examinations and testing of public adjusters. The commissioner shall keep a separate accounting of fees and costs to administer this act and no other fees generated under chapter 6 shall be used to administer this act.

SECTION 22. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 23. This act shall take effect immediately upon becoming law for the purpose of rulemaking. All other provisions of the act shall become effective on July 1, 2007, the public welfare requiring it.

PASSED: May 25, 2006


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES
JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 27th day of June 2006


PHIL BREDESEN, GOVERNOR